

Attachment D—Consent Agreement and Final Order (16 pages)
Request for Proposals (RFP)—Salem Housing Authority
Lead-Based Paint Consulting Services
8/6/07

JUN 14 2007

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June 12, 2007

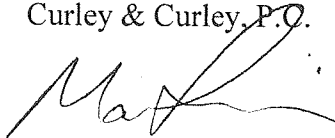
Carol MacGown
Executive Director
Salem Housing Authority
27 Charter Street
Salem MA 01970

RE: EPA v. Salem Housing Authority

Dear Carol:

Enclosed please find a copy of the final executed documents.

Very truly yours,
Curley & Curley, P.C.



Martin J. Rooney, Esq.

Enc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

IN THE MATTER OF:)
)
)

Salem Housing Authority)
27 Charter Street)
Salem, Massachusetts 01970)
)

Respondent.)
)

Proceeding under Section 16(a) of the)
of the Toxic Substances Control Act,)
42 U.S.C. § 2615(a))
_____)

Docket Number
TSCA-01-2006-0099

**CONSENT AGREEMENT
AND FINAL ORDER**

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint herein on June 29, 2006, against Respondent Salem Housing Authority ("Respondent"); and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section

16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a).

2. The Complaint alleges that Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act ("RLBPHRA"), 42 U.S.C. § 4851 *et seq.* and the regulations promulgated thereunder, 40 C.F.R. Part 745, Subpart F ("Disclosure Rule").

3. Respondent filed an Answer and requested a hearing.

4. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its successors and assigns.

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.

6. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint, waives its right to appeal the Final Order accompanying this Consent Agreement and waives any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

7. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the violations alleged in the Complaint. Complainant reserves any rights and remedies available to it to enforce the provisions of this Consent Agreement, of the RLBPHRA, TSCA, and the Disclosure Rule. Nothing in this Consent Agreement will prevent Complainant from taking any

necessary action to address conditions at Respondent's properties that may pose an imminent and substantial endangerment to public health or the environment. This Consent Agreement and Final Order in no way relieves Respondent of any criminal liability.

8. Each party shall bear its own costs and attorneys fees in the action resolved by this Consent Agreement and Final Order.

II. TERMS OF SETTLEMENT

9. Respondent certifies that it is in compliance with all applicable requirements of RLBPHRA, TSCA, and the Disclosure Rule.

10. Based upon the nature of the violations, Respondent's agreement to perform a supplemental environmental project ("SEP") and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$25,000.

11. Respondent consents to the issuance of this Consent Agreement and Final Order, and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and to the performance of abatement work.

12. *Payment of the penalty:* No later than thirty (30) days after the effective date of this Consent Agreement and Final Order, Respondent shall submit a corporate, cashier's or certified check payable to the order of the "Treasurer, United States of America," and referencing the title and docket number (TSCA-01-2006-0099) of the TSCA Consent Agreement and Final Order in the amount of \$25,000 to:

U.S. Environmental Protection Agency
Region I
P.O. Lock Box 360197 M
Pittsburgh, PA 15251

At the time of payment, Respondent shall send a notice of such payment, including copies of the check, to:

Wanda Rivera
Regional Hearing Clerk (RCH)
U.S. EPA, Region I
1 Congress Street
Suite 1100
Boston, Massachusetts 02114-2023

and

Andrea Simpson, Esq.
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

If Respondent initially submits a corporate check and the check does not clear, Respondent is required to submit a cashier's or certified check to pay the penalty. Pursuant to Sections 31 U.S.C. § 3717 and 16(a)(4) of the TSCA, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(d).

13. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvements. Not more than (30) days after the issuance of this Consent Agreement and Final Order, Respondent shall begin implementation of a compliance promotion SEP designed to assist all of the 235 local and regional housing authorities in Massachusetts with state-assisted public housing in achieving and maintaining compliance with federal and state lead paint laws. The SEP shall be completed within 20 months of the effective date of this Consent Agreement and Final Order.

14. Respondent shall complete the SEP as follows: Respondent shall hire a consultant who will design and implement a program to train and assist Massachusetts housing authorities in achieving and maintaining compliance with federal and state lead paint laws. The SEP is more specifically described in the scope of work (hereinafter, the "SOW"), attached hereto as Attachment 1 and incorporated herein by reference. Respondent shall implement the SEP in accordance with the specifications and schedule set forth in the SOW.

15. The total expenditure for the SEP shall be not less than \$207,300, in accordance with the specifications set forth in the SOW. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

16. Respondent hereby certifies that as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation, nor is Respondent required to perform or develop the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement

action for the SEP.

17. Respondent shall submit a SEP Completion Report to EPA by March 31, 2009. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts, canceled checks, or wire transfer records;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

18. Respondent shall submit interim reports to EPA at the same time that each deliverable is submitted pursuant to the SOW. The interim reports shall include:

- (i) A description of the work completed during the reporting period;
- (ii) A description of any problems encountered during the reporting period and the solutions thereto; and
- (iii) A description of the work that is projected to be completed during the next reporting period.

19. Respondent agrees that failure to submit the SEP Completion Report or any interim report required by paragraphs 17 and 18 above shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties

pursuant to paragraph 28 below.

20. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order to Andrea Simpson by first class mail at the address listed in paragraph 26 below.

21. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

22. Respondent agrees that EPA may inspect the Respondent's facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

23. After receipt of the SEP Completion Report described in paragraph 17 above, EPA will notify the Respondent; in writing: (i) identifying any deficiencies in the SEP Completion Report and granting Respondent an additional thirty (30) days to correct any deficiencies; or (ii) indicating that the project has been completed satisfactorily; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with paragraph 28 herein.

24. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is

determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may correct the deficiencies within thirty (30) days or object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 28 herein.

25. Respondent agrees that failure to complete the work described in paragraphs 14 and 15 above and the SOW, or to submit the information required by paragraphs 17 and 18 above by the dates specified, shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 28 below.

26. Respondent shall submit all notices and reports required by this Consent Agreement and Order by first class mail to:

Andrea Simpson, Esq.
U.S. EPA, Region 1 (SEL)
One Congress Street
Boston, Massachusetts 02114

27. Respondent shall maintain legible copies of documentation of the underlying

research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and Final Order and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports submitted to EPA pursuant to this Consent Agreement and Final Order, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

28. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the payment of the penalty or performance of the SEP described in paragraph 14 above and the SOW, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 15 above and the SOW, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) If Respondent fails to pay the penalty amount specified in paragraph 10 above by the date required in paragraph 12 above, Respondent shall stipulated penalties in the amount of \$500 per day until payment is received by EPA;
- (ii) Except as provided in subparagraph (iii) immediately below, if Respondent does not satisfactorily complete the SEP pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty in the amount of \$75,000 plus interest from the effective date of this Consent Agreement and Final Order;

(iii) If the SEP is not completed in accordance with paragraphs 14 and 15 and the SOW, but Complainant determines that Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;

(iv) If the SEP is completed in accordance with paragraphs 14 and 15 and the SOW, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay as a stipulated penalty, the difference between the amount spent and \$207,300, up to a maximum of \$75,000, plus interest from the effective date of this Consent Agreement and Final Order;

(v) If the SEP is completed in accordance with paragraphs 14 and 15 and the SOW, and Respondent spent at least 90 percent of the amount of money required to be spent for each project, Respondent shall not be liable for any stipulated penalties;

(vi) For failure to submit the SEP Completion Report required by paragraph 17 above, Respondent shall pay a stipulated penalty in the amount of \$150 for each day after the report was due until the report is received by EPA, unless EPA has granted a written extension of time for filing the SEP Completion Report.

(vii) For failure to submit an interim report required by paragraph 18 above and the SOW, Respondent shall pay a stipulated penalty in the amount of \$150 for each day after the report was due until the report is submitted, unless EPA has granted a written extension of time for filing an interim report.

29. The determination as to whether work has been properly performed in accordance

with this Consent Agreement and Final Order shall be in the sole discretion of EPA.

30. Stipulated penalties for paragraphs 28(vi) - (vii) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity or until the penalty is received by EPA.

31. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 12 above. Interest and late charges shall be paid as stated in paragraph 12 above.

32. Nothing in this Consent Agreement and Final Order shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

33. Any public statement, oral or written, in print, film, or other media, made by a representative of Respondent acting in his or her official capacity making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Residential Lead Based Paint Hazard Reduction Act, the Toxic Substances Control Act, and the Disclosure Rule."

34. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local

permit.

35. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify Complainant in writing not more than seven days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Agreement based on such incident.

36. If the parties reasonably agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

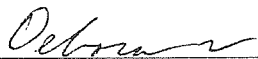
37. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Final Order has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the work shall not be excused.

38. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated

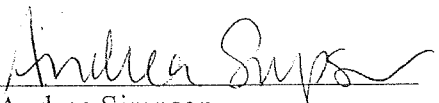
with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

39. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

For Complainant:

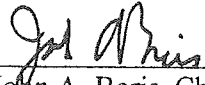

Deborah Brown
Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street
Boston, Massachusetts 02114

5/14/07
Date


Andrea Simpson
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street
Boston, Massachusetts 02114
(617) 918-1738

5/14/07
Date

For Respondent:



John A. Boris, Chairman
Board of Directors
Salem Housing Authority

5/4/2007
Date

ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement. This Consent Agreement and Final Order shall become effective thirty (30) days from today.

Date: 5/22/07



Sharon Wells
Regional Judicial Officer
U.S. Environmental Protection Agency
Region I